



DEPARTMENT OF THE ARMY  
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS  
4101 JEFFERSON PLAZA, NE  
ALBUQUERQUE, NEW MEXICO 87109-3435  
FAX (505) 342-3199

CESPA-OD-W (11-2-240a)

13 April 2001

MEMORANDUM FOR Commander, South Pacific Division, ATTN: CESPDMT-E

SUBJECT: Deviation from Approved Water Control Plan for Jemez Canyon and Abiquiu Reservoirs

1. On November 15, 1999, a coalition of environmental organizations - The Defenders of Wildlife, Forest Guardians, National Audubon Society, New Mexico Audubon Council, Sierra Club, and Southwestern Environmental Center - filed a lawsuit (*Rio Grande Silvery Minnow, et al., vs. Eluid L. Martinez, et al.*) against the Bureau and the Corps for failure to comply with the Endangered Species Act regarding water operations and river maintenance activities. On April 10, 2000, in response to a much lower-than-average spring runoff in the Middle Rio Grande, environmental organizations filed a Motion for Preliminary Injunction to maintain flows in the Middle Rio Grande in a manner which would be sufficient to prevent the river from drying, particularly in the San Acacia reach, and to facilitate silvery minnow spawning. Defendant-Intervenors in the suit included the Middle Rio Grande Conservancy District, the State of New Mexico, and the City of Albuquerque. In lieu of an injunction, the U.S. District Court, District of New Mexico, ordered mediation amongst all parties. This deviation is an effort by the defendants to settle the case by providing additional storage of water for the endangered silvery minnow as described below and in the supporting enclosures.

2. On March 5, 2001, the state of New Mexico (NM) offered a settlement proposal in the case of the Rio Grande Silvery Minnow, et al v. Eluid L. Martinez, et al., U.S. District Court, District of New Mexico, Civ. No. 99-1320 JP/KBM-ACE. The action is for storage of native flows in Abiquiu and Jemez Reservoirs to supplement flows in the main stem of the Rio Grande for the benefit of the Rio Grande Silvery Minnow (RGSM). New Mexico will establish a temporary conservation pool in which water will be stored when native flows exceed downstream demands and released during the summer and fall for the benefit of the RGSM.

3. The Albuquerque District's evaluation of the planned deviation at Jemez Canyon and Abiquiu Reservoirs is enclosed along with an EA and FONSI for the action.

4. Request approval of this deviation from the approved Water Control Plans in order to begin the actions necessary to implement the water storage provisions of the proposal. If you wish additional information or have questions, please contact Mr. Dick Kreiner at (505) 342-3383.

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RAYMOND G. MIDKIFF  
LTC, EN  
Commanding

Settlement Proposal  
Environmental Assessment  
Concurrence letter from U. S. Fish and Wildlife Service  
Jemez Canyon Reservoir Memorandum of Agreement  
Abiquiu Reservoir Memorandum of Agreement  
Resolution of the Rio Grande Compact Commission  
Memorandum of Understanding Regarding Endangered Species  
Conservation Pool  
Correspondence with city of Albuquerque

## **Summary of the Proposed Deviation from the Water Control Plan at Jemez Canyon and Abiquiu Reservoirs**

1. The proposed deviation is for storage of native flows in Abiquiu and Jemez Canyon Reservoirs to supplement flows in the main stem of the Rio Grande for the benefit of Rio Grande silvery minnow. As part of the proposal, the state will establish a temporary conservation pool with storage at Abiquiu and Jemez Canyon Reservoirs. The water would be stored when native flows exceed downstream demands. Storage at Jemez Canyon and Abiquiu Reservoirs would begin April 13. Jemez Canyon storage would be limited to the top of the sediment pool (24,425 acre-feet). Storage at Abiquiu would be limited by the available amount of runoff and not exceed a total pool volume of 183,381 acre-feet. The releases will be limited to approximately 150 cfs at Abiquiu and 20 cfs at Jemez Canyon during the time period when excess flows are being stored. The release rates could increase in order to meet demand. The amount of water available for release for silvery minnow purposes would not exceed 30,000 acre-feet (plus any carryover water from the prior year) in a given year. The amount of water during the 2001 snowmelt runoff in excess of demand that could be stored in Jemez Canyon is approximately 20,000 acre-feet and at Abiquiu that amount is approximately 50,000 acre-feet. Release of the stored supplemental water would start in late June or early July, and continue through the end of the irrigation season. The release rate from Abiquiu and Jemez Canyon Reservoirs would be proportional to the amount of supplemental water stored in each reservoir. Preliminary estimates show that the target release of 100 cfs would be made up of a release of 20 cfs from Jemez Canyon and 80 cfs from Abiquiu. The deviation would start April 13, 2001 and end October 31, 2003. At the end of the three-year period the storage, in Abiquiu, would approach elevation 6220, which is the maximum storage allowed for San Juan-Chama (SJC). As the native water is being used out of Abiquiu during that three-year period it will be replaced with SJC deliveries for the city of Albuquerque and other entities. At Jemez Canyon Reservoir the pool will return to the remaining (SJC) sediment pool water minus evaporation. At the present time the sediment pool is approximately 3,600 acre-feet.

2. Effect on Corps Operations - Normal operation would continue at Jemez Canyon and Abiquiu Dams in regards to flood and sediment control. As part of the agreement the Corps may evacuate the described conservation storage or any portion thereof as necessary for flood control purposes, in accordance with authorized project purposes. The Corps further reserves the right to take such measures as may be necessary to preserve life and property, including being able to meet emergency situations or to permit

maintenance or repair of the dams or appurtenant structures. Regulation and releases will be accomplished with the Corps service gates and the Corps will not be liable or responsible for any loss of the stored waters resulting from releases made to accomplish the projects flood control purpose or due to any malfunction of the service gates or inspection and maintenance of the gates that may be necessary to assure the proper and safe operation of the projects. Prior to executing the settlement agreement there will be no releases made of the stored conservation water for the purposes of the silvery minnow. When all parties agree to the settlement agreement, it is expected that the Bureau of Reclamation will be the lead agency in making release decisions in consultation with the U.S. Fish and Wildlife Service and the Corps.

3. Potential Flood Threat - We do not anticipate any flood threat from this operation because this deviation does not impair or change the existing flood control regulation/operation at either project.

4. Predicted change in elevation - Jemez Canyon Reservoir would increase approximately 23 feet starting April 13. Of the expected 20,000 acre-feet of additional storage, approximately 6,000 acre-feet will be released to enhance the peak release from Cochiti Dam due to snowmelt runoff. The maximum release from Jemez Canyon Dam would be approximately 1,000 to 1,500 cfs. The maximum release from Jemez Canyon Dam would be timed with the maximum release from Cochiti Dam to provide a 5,000 cfs spike release through the Middle Rio Grande Valley. Abiquiu Reservoir would increase in elevation approximately 17 feet starting on April 13. Approximately 50,000 acre-feet could be stored at Abiquiu Reservoir. The bulk of this storage would occur during May after El Vado Reservoir fills. If no settlement agreement is reached, we expect the release to be in the neighborhood of 200 cfs from Abiquiu and 60 cfs from Jemez Canyon between November 1, 2001 and February 28, 2002. We do not anticipate any native storage in place at the end of this agreement.

5. Effect on Environment - Storage of native water in Jemez Canyon and Abiquiu Reservoirs, under the settlement proposal, is subject to compliance with the National Environmental Policy Act (NEPA). Compliance of NEPA has been accomplished with the attached EA and the Finding of No Significant Impact (FONSI). This action will not negatively affect any federal threatened or endangered species or critical habitat. A detailed description of project features and the associated environmental and cultural setting are described in the EA. Fish and Wildlife Service (FWS) response in regards to this action is that they concur with the finding. See enclosed EA and response from the FWS.

6. Effect on other agencies and individual interests - The Pueblo of Santa Ana and City of Albuquerque support this action. The Rio Chama Acequia Association claims that this action will adversely impact water rights on the Rio Chama. The State of New Mexico would not enter into the agreement if water rights were impacted. Storage of native water will occur only when all rights are met. See enclosed MOA with the Pueblo of Santa Ana, NM Interstate Stream Commission and the Corps concerning storage in Jemez Canyon Reservoir and the enclosed MOA between the NM Interstate Stream Commission and the Corps concerning storage in Abiquiu Reservoir.

7. Coordination - The Rio Grande Compact Commission (RGCC) has approved the storage of native water in Jemez Canyon and Abiquiu Reservoirs. See enclosed RGCC resolution. The Middle Rio Grande Conservancy District, Bureau of Reclamation, and City of Albuquerque have been notified of the proposed agreement. See enclosed correspondence with city of Albuquerque. Coordination with Fish and Wildlife Service and Pueblo of Santa Ana has taken place and they support the proposal. See attached EA for comments from Pueblo of Santa Ana and Fish and Wildlife Service.

8. Alternative measures - Without adoption of this deviation, the terms of the settlement agreement would be impossible and no alternate solutions are available that would provide this much water for the Rio Grande Silvery Minnow. The projects will be operated to pass inflow without the deviation.

9. District counsel has determined that the Corps has the authority under the respective authorizations as well as ER 1165-2-501 and ER 1165-2-502 to implement the proposed agreement.

10. Recommended fees - There are no fees associated with this action since the Corps is party to litigation in the case of the Rio Grande Silvery Minnow, et al. v. Eluid L. Martinez, et al., U.S. District Court, District of New Mexico, Civ. No. 99-1320 JP/KBM-ACE. Costs associated with this deviation are covered under existing budgeted O&M funds and no additional funding requirements are anticipated.

11. In the event that a settlement proposal is not executed prior to June 30, 2001, all parties agree to evacuation of water stored under the terms of the agreements between November 1, 2001, and March 1, 2002 at times and in quantities specified by the NM Interstate Stream Commission after consultation with the Corps. The state of Texas reserves the right to rescind its approval of the Rio Grande Compact Commission Resolution allowing the storage of native water in Corps reservoirs if it determines an effect on

the lower basin state.

12. With or without this deviation SPA Geotech monitors seepage conditions at Abiquiu and Jemez Canyon Dams as part of normal operations. Monitoring at both projects will continue during the deviation period. SPA Geotech concurs with the deviation proposal.

13. At this time we do not recommend a change in the Water Control Plan at Abiquiu or Jemez Canyon Reservoirs. This is a short-term deviation to provide time for the Middle Rio Grande Operations Review and ESA workgroups to address issues in the Rio Grande Basin.